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**FISCAL IMPACT STATEMENT**

**LS 6843**

**BILL NUMBER:** SB 335

**NOTE PREPARED:** Jan 5, 2008

**BILL AMENDED:**

**SUBJECT:** Illegal Alien Matters.

**FIRST AUTHOR:** Sen. Delph

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X GENERAL  
X DEDICATED  
X FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** *State Police & Local Law Enforcement Matters-* The bill requires the Superintendent of the State Police Department (SPD) to: (1) negotiate terms of a memorandum of understanding concerning a pilot project for the enforcement of federal immigration and customs laws; and (2) designate appropriate police employees to be trained under the memorandum. The bill requires: (1) the Superintendent and Governor, unless otherwise required by the applicable federal agency, to sign the memorandum on behalf of the state; and (2) the SPD to apply for federal funding, as available, for the costs associated with training the police employees. The bill provides that a police employee certified as trained may enforce the federal immigration and customs laws.

*Prohibition of Employment of Unauthorized Aliens-* The bill prohibits a person from knowingly employing an unauthorized alien.

*Attorney General Provisions-* The bill requires the Attorney General (AG) to: (1) investigate a complaint that an employer knowingly employed an unauthorized alien; (2) verify the work authorization of the alleged unauthorized alien with the federal government; (3) notify United States Immigration and Customs Enforcement, local law enforcement agencies, and the appropriate prosecuting attorney; and (4) maintain certain records of violation orders.

*County Prosecutor Provision-* The bill requires prosecuting attorneys to file actions against employers for knowingly employing unauthorized aliens after December 31, 2008.

*Trial Court Provisions-* The bill requires a court to: (1) hold a hearing and make a determination of the action on an expedited basis; (2) if a person knowingly employs an unauthorized alien, order the employer to

terminate the employment of unauthorized aliens, order the employer to file a signed affidavit, and place the employer on probation for three years; (3) order agencies to suspend all licenses held by the employer for the operation of the business location if the employer fails to file a sworn affidavit; (4) for a second violation during the probationary period, order agencies to revoke all licenses held by the employer for the operation of the business location; and (5) send copies of orders to the AG.

The bill provides that a court may: (1) suspend an employer's licenses if an employer knowingly employs an unauthorized alien; and (2) consider only the federal government's verification or status information in determining whether an individual is an unauthorized alien. The bill establishes: (1) a rebuttable presumption that an employer did not knowingly employ an unauthorized alien if the employer verified the employment authorization of an individual through the federal pilot program; and (2) an affirmative defense if the employer complied in good faith with the federal employment verification requirements.

*Prohibition of Local Ordinances, Resolutions, and Rules-* The bill prohibits a governmental body from enacting an ordinance, resolution, rule, or policy that prohibits or limits another governmental body from sending, receiving, maintaining, or exchanging information on the citizenship or immigration status of an individual.

*Legal Recourse Regarding Prohibition-* The bill allows a person to bring an action to compel a governmental body to comply with the prohibition.

*State Department of Health-* The bill requires: (1) hospitals to provide information to the State Department of Health (SDH) on the total cost of health care services for individuals who are not citizens or qualified aliens; and (2) the SDH to compile the information and provide an annual report to the General Assembly.

*Penalty Provision-* The bill makes it a Class C misdemeanor to knowingly file a false or frivolous allegation with the AG.

*Public Contracts and Unauthorized Aliens-* The bill prohibits a state agency or political subdivision from entering into or renewing a public contract for services with a contractor if the state agency or political subdivision knows that the contractor employs or contracts with unauthorized aliens. The bill provides that: (1) a state agency or political subdivision may terminate a public contract for services if the contractor providing the services employs or contracts with unauthorized aliens unless the state or political subdivision determines that terminating the contract would be detrimental to the public interest or public property; and (2) if a public contract for services is terminated, a contractor is liable for actual damages. The bill allows a contractor of a public contract for services to terminate a contract with a subcontractor if the subcontractor employs or contracts with unauthorized aliens.

*Penalty Provisions-* The bill makes it a: (1) Class A misdemeanor to transport or move; and (2) Class A misdemeanor to conceal, harbor, or shield from detection; an alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law. The bill makes these offenses a Class D felony (Class C felony for subsequent offenses): (1) for a subsequent offense; (2) if the offense involves more than five aliens; or (3) if the offense was committed for the purpose of commercial advantage or private financial gain.

**Effective Date:** July 1, 2008; January 1, 2009.

**Explanation of State Expenditures:** *State Police & Local Law Enforcement Matters-* The SPD would

experience an increase in administrative time to negotiate the terms of the pilot program memorandum. The SPD would also be required to apply for funding from the federal government to cover the costs to appoint local law enforcement officers to carry out the program. The SPD's expenditures could increase to cover the cost of training, if funds are not received from the federal government and the training program is still carried out.

*Attorney General Provisions-* The AG does not currently investigate complaints regarding employment of unauthorized aliens. The AG currently forwards complaints on employment of unauthorized aliens to either the U.S. Department of Labor or the U.S. Immigration and Customs Enforcement (ICE). Consequently, the bill would place several additional administrative responsibilities on the Attorney General. It is estimated that the expenditure to cover the AG's responsibilities under the bill would be between \$265,000 and \$465,000 in the first full year of implementation, based on the PEW Hispanic Center's estimate of between 55,000 and 85,000 unauthorized aliens in Indiana, or about 0.5% to 0.75% of the nation's estimated 11.5 million unauthorized aliens. Actual total expenditures to the AG to meet the requirements of the bill will depend on the number of complaints processed and additional investigations conducted in a given year.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

*Public Contracts and Unauthorized Aliens-* If private contractors were required to take additional time and expense to verify that each employee involved with a state contract (including subcontractors employed by the contractor) is not an unauthorized alien, the expense of such investigation would likely be passed on to the state during price negotiations of future contracts.

*State Department of Health-* The SDH would have to modify hospital data inquiry forms in order to collect the additional information required by the bill. The SDH would incur minimal additional expenditures to modify forms and produce an electronic report to the General Assembly.

*Penalty Provisions-* A Class D felony is punishable by a prison term ranging from 6 months to 3 years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. A Class C felony is punishable by a prison term ranging from 2 to 8 years, depending upon mitigating and aggravating circumstances.

The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately 10 months, and for all Class C felony offenders is approximately 2 years.

### Background Information-

*Attorney General-* The AG's General Fund appropriation is \$15.4 M for FY 2008. The AG did not revert any of their General Fund appropriation at the close of FY 2007. As of the beginning of FY 2008, the AG had 31 vacancies worth \$311,302 in salary.

*State Police-* Over the current biennium, the State Police Department will receive approximately \$20.8 M in federal funds for various programs, including two Homeland Security programs. The SPD reverted approximately \$185,000 to the state General Fund at the close of FY 2007.

*Verification Programs-* There are two programs that are in common usage with verification of an employee's legal residency. They are called the E-Verify and SAVE programs. The E-Verify program is currently free to all online registered users. SAVE automatically charges a minimum monthly service fee of \$25 for verifications or \$300 per year.

*Unauthorized Aliens-* As of 2005, there were an estimated 55,000 to 85,000 unauthorized aliens in Indiana and an estimated 128,000 authorized immigrants admitted to the United States during FY 2006 that claimed Indiana as their state of destination. There have been an additional 55,000 immigrants in the state of Indiana that have been legalized between the years 1997 and 2006.

**Explanation of State Revenues:** *Public Contracts and Unauthorized Aliens-* The state could collect damages from a contractor if a contract were terminated because of a breach of contract for reasons specified by the bill. Contractors would be liable for actual damages if the contract were terminated by the state.

*Penalty Provisions-* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000, \$500 for a Class C misdemeanor, and \$10,000 for a Class C or D felony. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** *County Prosecutor and Trial Court Provisions-* If the AG investigates and determines that an employer hired an unauthorized alien, the AG would notify the appropriate county prosecuting attorney. The prosecuting attorney would file an action against the employer in the local court. Depending on the volume of complaints forwarded by the AG, local prosecuting attorneys and courts would require additional administrative and trial time for cases involving unauthorized alien employment. The workload of courts and prosecuting attorneys would be more affected in counties with high volume of criminal cases. Depending on the type of monitoring and supervision that the court could place on an offender, the court's probation department may also need to increase the number of probation officers that it employs.

*Public Contracts and Unauthorized Aliens-* There could be increased costs to local units of government to defend against an action filed by a contractor.

*Legal Recourse Regarding Prohibition-* Political subdivisions could require the services of an attorney in order to defend against an action filed by a person claiming that the government is not enforcing a prohibition of employment of illegal aliens.

*Penalty Provisions-* A Class A misdemeanor is punishable by up to one year in jail. A Class C misdemeanor is punishable by up to 60 days in jail. If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

**Explanation of Local Revenues:** *State Police & Local Law Enforcement Matters-* Local law enforcement agencies could receive federal funding through the state if local police officers were to participate in the immigration enforcement pilot program. Any funds received would depend on any monetary agreement reached between the state and federal government.

*Penalty Provisions-* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

**State Agencies Affected:** SPD; SDH; AG; DOC.

**Local Agencies Affected:** Local law enforcement, county prosecutors, trial courts.

**Information Sources:** PEW Hispanic Center estimates of unauthorized aliens in Indiana and the U.S.; *State of Indiana List of Appropriations, July 1, 2007, to June 30, 2008*; Brian Carnes, Legislative Liaison, SDH; Matt Light, Legislative Liaison, Office of the Attorney General; Indiana Sheriffs' Association; DOC.

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